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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CALEB L. MCGILLVARY)	CIVIL ACTION NO.
PLAINTIFF)	3:22-cv-06430-MAS-LHG
)	Hon. Michael A. Shipp, U.S.D.J.
V.)	Hon. Lois H. Goodman, U.S.M.J.
)	
RAHMO REIZ)	
DEFENDANT)	

MOTION FOR ORDER FOR SUBPOENAS TO ISSUE AND FOR SCHEDULING ORDER
(Fed. R. Civ. P. 45, 16(b))

Relief Sought

Caleb L. McGillvary ("Plaintiff") moves this Court for an Order:

1. That the Clerk sign and affix the Court's seal to, and issue four subpoenas as sent to the Clerk in this matter by Plaintiff on January 20, 2024.
2. That the U.S. Marshal serve the issued subpoenas the persons or entities which Plaintiff will indicate on the completed subpoenas and accompanying USM-285's.
3. Issuing a scheduling order pursuant to Rule 16.

Factual Basis for Motion

The Supporting Declaration of Caleb L. McGillvary establishes that:

1. On November 20, 2023, Hon. Michael A. Shipp, U.S.D.J. denied Defendant's motion to dismiss and ordered Defendant to answer Plaintiff's complaint.
2. On December 3, 2023, Defendant filed an Answer to the complaint.
3. Plaintiff is an incarcerated pro se litigant who is exempt from the requirements of Rule 26(f)
4. Plaintiff mailed four subpoenas to the Clerk, with a request for the Clerk to sign and affix the Court's seal to, and to issue the subpoenas in this matter. A copy of the postage remit witnessed by a corrections officer evidencing this is attached hereto as Exhibit A.
5. As of today's date, it has been over 4 months since the Court denied Defendant's motion to dismiss and ordered that his case proceed to discovery, and a discovery or scheduling order has not yet issued.

Legal Basis for Motion

Rule 45 of the Federal Rules of Civil Procedures authorizes a Party may submit to the Clerk a request to issue a subpoena, and upon receipt of this request, the Clerk must sign and affix the Court's seal to the subpoena and issue it to the Party.

Rule 4(c)(3) and 28 U.S.C. 1915(d) requires the U.S. Marshal to effect service of process in all cases in which the Plaintiff is pro se and proceeding in forma pauperis.

DNJ Local Rule 16.1(a)(1), (b)(1) requires the Court to issue a scheduling order within 60 days of the initial answer. See also Fed. R. Civ. P. 16(b)(2) ("Unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared")

Plaintiff filed his request with the Clerk to issue 4 subpoenas on January 20, 2024 pursuant to the prison mailbox rule. He is entitled to an order directing the Clerk forthwith to issue the subpoenas.

Plaintiff was granted in forma pauperis status on November 28, 2022. He is entitled to an order directing the Marshal to serve

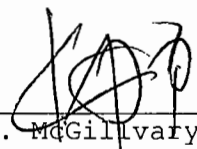
the issued subpoenas upon the individuals named in them, once they are completed and accompanied by USM-285's.

It has been over 60 days since Defendant filed his Answer to the complaint in this matter. Plaintiff is entitled to a scheduling order in this matter.

Conclusion

For all the foregoing reasons, Plaintiff respectfully asks the Court to grant his motion and issue the proposed order.

Dated: 3/26/24

By: 
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